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09/456,166	12/07/1999	JOSE VILLENA	CELLIT-003XX	6064

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EXAMINER
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BLOUNT, STEVEN

ART UNIT	PAPER NUMBER
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2661

DATE MAILED: 11/05/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/456,166

Applicant(s)

Villena et al

Examiner

Blount

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☐ Responsive to communication(s) filed on 8/6/03
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-15 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-15 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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## DETAILED ACTION

### *Drawings*

1. The corrected or substitute drawings were received on 8/6/03. These drawings are accepted.
2. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the prior (USPN 6389132) reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

Applicant has provided a statement regarding conception on behalf of only one of the inventors. For obvious reasons, this does not constitute complete evidence of conception prior to October 13, 1999, since the other three inventors may have contributed their ideas to form the complete conception of the invention at later dates than this.

3. The Declaration filed under 37 CFR 1.132 filed is insufficient to overcome the rejection of claim based upon as set forth in the last Office action because it is labeled as proprietary information "provided for the internal use of the corporate entity to which it was provided by Tern systems". A document such as this can hardly be considered to be sufficient to show that a concept was part of the ordinary skill in the art.

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***Claim Rejections - 35 U.S.C. § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1 - 15 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant has detailed the CCPRO as being an essential component of their invention. However, nowhere in the specification is it described how the CCPRO works, or is there even a brief description of what kind of a switch it is. The closest is a description on page 6, first paragraph, which states that it is a TDM switch, and that the number of time slots is  $T + S + R + B$ . However, as the article "Will communications servers make the PBX extinct?" indicates, the CCPRO is a device that enables one to "set business rules for procedures like routing calls and e-mail messages", and is thus a rules based call management system. See also "CELLIT sells it whole; one-stop v. Open-systems shopping", page 2, 4th paragraph: : "CenterCord, CCPRO's object-oriented engine that stores all business rules and provides real-time communications access". The operation of CCPRO is certainly not within the ordinary knowledge of one skilled in this art, and its fundamental operation, even in brief, should have been disclosed by the applicant.

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The examiner reiterates that it is not within the ordinary skill in the art to know how a CCPRO operates. Applicants have merely provided a black box (210) as the crux of their invention, and provided the examiner, in response to his rejection, with a proprietary document to show that “the CCPRO is in the conventional art and is known to one of ordinary skill in the art”. The examiner agrees that it is at least “in the art” (see below) but that it is not widely enough known to be considered “part of the ordinary skill in the art”.

***Claim Rejections - 35 U.S.C. § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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7. Claims 1 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. patent 6,389,132 to Price.

With regard to claim 1, Price teaches a contact center with switch servers 18, 20, and 22 for connecting to public network 16, the contact center resources "configured to interface with the switch servers" via lan 24, and other contact resources "configured to interface with the switch servers" via the PBX 26. The examiner would like to note that, in col 3, line 27 of Price, it is stated that "contact server 20 can manage the sequencing of multiple customers 10 requesting information to pool of agents 28".

With regard to claim 14, agent terminals 30 are connected to PBX 26, the PBX connected to switch server 22 and ultimately the PSTN, the switch server agent terminals also connected to each other "via intranet 24".

8. Claims 1 - 15 are rejected under 35 U.S.C. 102(a) as being known or used by others in this country before the date of invention, as evidenced by "Outbound Call Processing Markets, Products and Suppliers - 1999" (June 1999), and "Contact Center Professional 4", published in "CallCenter" (6/5/01), including the admission by the applicant.

The examiner believes that the evidence in these documents is sufficient to form a conclusion that applicants invention was in public use by others before the date of invention. Because the 131 Affidavit was deemed insufficient by the examiner, the only date for the invention that the examiner can consider is the filing date, 12/07/1999 (even if it were sufficient,

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it is noted that in the article in "CallCenter", it is stated that CCPRO has been in public use since December 1998, which is *around* (but not conclusively more than) a year before applicants filing date). As noted, the article in "CallCenter" shows that it was in public use well before the applicants filing date. Further, on page 4-11 of the "Outbound Call Processing Markets" article, in the last paragraph, it is stated that the CCPRO is PBX-Independent. Further, Applicant has even admitted that this covers the invention, as the word "invention" with an arrow pointing toward the sentence "linear growth supporting from 16 to N x 150 Agents" is found on the document.

***Claim Rejections - 35 U.S.C. § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2 - 3, 6 - 7, 9 , and 12 - 15 are rejected under 35 U.S.C. 103(a) as being obvious over U.S. patent 6,389,132 to Price.

With regard to claim 2, Price teaches the invention as described above, but does not explicitly teach the servers to all be connected directly to the intranet (lan) 24, as they are outside of the cloud. However, for all practical purposes, since they are all in communication with each other and can communicate with members inside the intranet via a direct connection, it is fair to

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consider them “connected to the intranet”, and if they do happen to be connected to the intranet via the extension between 18 and 24, this is only a slight and obvious modification.

With regard to claim 3, since there is only a finite amount of bandwidth in the switch servers 18/20/22, any bandwidth used to communicate between the switch servers is unavailable to communicate with contact center resources.

With regard to claim 6, each of the elements claimed is described above, and while switches 18 and 22 interface to the public networks, they do not directly “interface” each other, due to the presence of member 20, although having an intermediate member in the interface is a minor design variation.

With regard to claim 7, see the interface between 26/28 (pbx/agents) and connection joining the PBX to the switch servers, the switch servers in communication with each other over a local area network extension (see discussion with respect to claim 2 above with regard to this being an obvious variation) where the function of the PBX/agent connection is the same as the LAN/agent connection.

With regard to claim 9, the agent/PBX connection shown in figure 1 of Price would make obvious the use of the LAN/PBX connection also shown in this figure if the number of PBX connections should run out.

With regard to claim 12, note the connection of the agents to the pbx and the switch and pstn as well as their well known functions, and further note the position and function of switch servers 18/20/22, and note that in col 6 lines 21+, it says that a customer can request a connection

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with the agent, but it does not explicitly say with the pbx, although it would be obvious to do so in view of figure 1.

With regard to claim 13, in col 3, lines 33+, it is stated that the switch server 22 can establish a live connection with customer 12, obviously through the pbx.

With regard to claim 14, each of the elements claimed are described in detail above. Note that while there is only 1 line (port) shown, having a plurality of them is an obvious modification.

With regard to claim 15, hold and transfer are described in col 3, lines 42+.

11. Claims 4 - 5 and 8 are rejected under 35 U.S.C. 103(a) as being obvious over U.S. patent 6,389,132 to Price as applied to claim 1 above, and further in view of U.S. patent 6,005,920 to Fuller et al.

With regard to claim 4, Price describes the invention as described above, but does not teach the use of an additional, back-up switch which will reroute the trunks in case of failure on the main switch. A backup switch of this type, used in a similar environment, is taught in Fuller et al. See especially column 4, lines 30+ and 65+. It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided Price with a backup switch, in light of the teachings of Fuller et al, in order to provide a robust system which can still function even in the event of a failure. With regard to claim 5, there is only 1 additional switch shown in figure 2 of Fuller et al.

With regard to claim 8, see the above, as well as how the switch servers interface with public networks.

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12. Claims 10 - 11 are rejected under 35 U.S.C. 103(a) as being obvious over U.S. patent 6,389,132 to Price as applied to claim 9 above, and further in view of U.S. patent 6,473,505 to Kuhc.

Price teaches the invention as described with respect to claim 9 above, but does not teach the LAN to be an Ethernet or ATM. These types of lans are taught in Kuhc. See members 400 and 330. It would have been obvious to one of ordinary skill in the art at the time of the invention to have had the lan of Price or Kuhc be either ATM or Ethernet, in light of the teachings of Kuhc, in order to use commercially available and well known networks so that they can be easily installed with the switch servers discussed above.

***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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***Contact Information***

14. Examiner Blount may be contacted at the Patent Office between the hours of 9:00 am to 5:30 P.M. Monday through Friday. His phone number is (703)



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10/20/03